



Client Alert



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Treasury Final Rule Allows Delivery of Federal Payments to Resident Trust and Patient Fund Accounts

On September 23, 2011, the Department of Treasury, Financial Management Service, issued a Final Rule to amend certain regulations (31 CFR Part 210) governing the use of the Automated Clearing House (ACH) network by federal agencies (the Final Rule). Among other things, the Final Rule adds several exceptions to the long-standing requirement that ACH payments be delivered only to deposit accounts that are registered "in the name of the recipient," including an exception to allow such payments to be deposited to pooled resident trust or patient fund accounts established by nursing facilities, pursuant to requirements under federal law relating to the protection of such funds. In issuing the Final Rule, the agency notes that the resident trust/patient fund exception is supported by the extensive protections already provided for nursing home residents in the federal statutes and regulations governing the establishment of such accounts held by nursing facilities.

Background

The ACH network is the nationwide electronic system that supports the clearing of electronic credit and debit transactions and the exchange of payment-related information among banks and other participating financial institutions. As noted above, ACH regulations require that federal non-vendor payments issued as ACH credit entries, such as Social Security benefit payments, be delivered to a deposit account at a financial institution listed "in the name of the recipient," subject to certain listed exceptions. Historically, the requirement that the deposit account be "in the name of the recipient" was devised as a consumer protection policy to protect the intended recipient of a payment from being subjected to a master/sub account relationship, in which the recipient might have little to no control over the account itself.

The Nursing Home Resident Trust / Patient Fund Exception

In 2008, the Social Security Administration requested public comment on the issue of nursing home resident trust and patient fund accounts and subsequently concluded that the use of master/sub account arrangements by nursing homes to handle Social Security benefit payments for their residents was a widespread practice that also provided a benefit to such residents. As a result, the Treasury Department concluded that the deposit of federal payments to such pooled accounts held by nursing homes did not pose any significant

concerns, particularly in light of the regulatory safeguards that exist for the establishment, management, and accounting of such accounts.

The preamble to the Final Rule cites several examples of federal regulation over nursing home resident trust and patient accounts as support for the new exception:

- A nursing facility must obtain written authorization of the resident to “hold, safeguard, manage and account for” the person funds of the resident deposited with the facility.¹
- A nursing facility resident must be provided a written description of his or her legal rights, including a description of the protection of personal funds and information on filing a complaint with the state agency for the misappropriation of resident property by the facility.²
- In managing a resident’s personal funds, a nursing facility must maintain separate accounts, provide a complete separate accounting for each resident, and maintain a written record of all financial transactions.³
- A nursing facility must purchase a security bond to assure the security of all resident personal funds deposited with the nursing facility.⁴
- No charges may be imposed by the nursing facility against a resident’s personal fund for the management services related to such accounts.⁵

1 42 U.S.C. § 1396r(c)(1)(B); 42 C.F.R. § 483.10(c)(2)

2 42 U.S.C. § 1396r(c)(1)(B); 42 C.F.R. § 483.10(b)(7)(i)

3 42 U.S.C. § 1396r(c)(6)(B)(i)-(ii)

4 42 U.S.C. § 1396r(c)(6)(C)

5 42 U.S.C. § 1396r(c)(6)(D)

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